

CIVIL SERVICE COMMISSION MINUTES
June 2, 2010

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel
W. Dale Bailey
William O'Connor
A. Y. Casillas

Absent was: None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zmary, Executive Officer
Karen Landers, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission

July 7, 2010

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
June 2, 2010**

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California

CLOSED SESSION AGENDA

County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

A. Commissioner Krauel: CONSIDERATION OF PUBLIC
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Bradley
Fields, Esq., on behalf of **2010-01**, appealing an Order
of Pay Step Reduction and Charges from the Sheriff's
Department.

OPEN SESSION AGENDA

County Administration Center, Room 358

MINUTES

1. Approval of the Minutes of the regular meeting of May 5, 2010.

Approved.

CONFIRMATION OF ASSIGNMENT

2. Commissioner Casillas: **Carrie Harris**, former Departmental Human Resources Officer, appealing an Order of Termination and Charges from the County Library.

Confirmed.

DISCIPLINES

Findings

3. Commissioner Krauel: Bradley Fields, Esq., on behalf of **2010-01**, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2010-01, (Employee), from a written Order of Pay Step Reduction and Charges reducing Employee's pay for a period equivalent to ten (10) work days (85 hours) came on for hearing on May 3, 2010.

The official file of the proceedings shows that the Order of Pay Step Reduction and Charges was dated January 14, 2010, signed by William D. Gore, Sheriff, and that the causes of discipline were CAUSE I: You are guilty of negligence or willful misconduct which caused damage to public property or waste of public supplies as set forth under Section 7.2 (1) of Rule VII of the Rules of the Civil Service Commission in that you utilized your mobile data computer (MDC) while driving your assigned Sheriff's patrol vehicle for unrelated business, by typing and receiving personal MDC messages.

CAUSE II: You are guilty of inefficiency in that you utilized your MDC for unrelated business, typing and receiving personal messages while driving your assigned Sheriff's patrol vehicle. CAUSE III: You are guilty of acts that are incompatible with and/or inimical to the public service as set forth under Causes I and II above.

At the beginning of the hearing, the Department modified each of the written Causes by stating that the Department was no longer charging the Employee with causing a vehicle accident. The Department was now only charging the Employee with violating Department policies concerning speeding and the use of the Mobile Data Computer (MDC) for personal purposes.

On April 25, 2009, while driving an assigned vehicle on official duty, Employee exceeded the speed in violation of Policy 2.35. That policy requires Employee to obey the speed laws while operating the vehicle.

On April 25, 2009, while driving an assigned vehicle on official duty, Employee used the Department's MDC for personal communications by "texting" with another deputy about non-work related matters, in violation of Policy 2.35. That policy requires Employee to use the MDC for official purposes only and not to use the MDC while driving unless immediately necessary.

DISCUSSION OF CAUSES: Cause I, The Department proved that Employee negligently or willfully violated Policy 2.35 by exceeding the speed limit and by using the MDC for something other than official business and while driving. The department did not prove that either one of these violations caused damage to public property or a waste of public supplies. Cause II, citing Civil Service Rule 7.2(b), required that the Department prove that Employee was "guilty of inefficiency." The County's Disciplinary Guide states that "inefficiency" is conduct which "does not produce the intended or desired effect" or, in other words, conduct which "wastes time or energy." The Department did not prove that Employee's driving at an unlawful speed or use of the MDC for other than official purposes while driving produced an unintended or undesired effect, or wasted time or energy. Cause III, citing Civil Service Rule 7.2(s), required that the Department prove that Employee was guilty of an act "that is incompatible with and/or inimical to the public service." The Department proved that Employee operated a vehicle at an unlawful, excessive speed in violation of policy. The Department proved that Employee used the MDC while driving when it was not immediately necessary. This improper operation of a vehicle on a public roadway posed a risk to the public safety that is incompatible with and inimical to the public service.

CONCLUSIONS: A. Employee is not guilty of Cause I, negligence or willful misconduct; B. Employee is not guilty of Cause II, inefficiency; and C. Employee is guilty of Cause III, acts which are incompatible with and/or inimical to the public service.

LEVEL OF DISCIPLINE: It was undisputed that Employee has received formal discipline for conduct involving Policy 2.35 - Operation of Vehicles - on seven occasions since 1995. There was undisputed evidence that Employee received training and extra training concerning vehicle operation.

In mitigation, Employee appeared at the hearing to be personable and straightforward. Employee's testimony at the hearing appeared forthright and credible. Department's witness, Lt. M., called Employee a "good deputy." Considering all the circumstances, the Department's selected discipline is appropriate.

Based on the findings and conclusions set forth above, it is hereby recommended that the Order of Pay Step Reduction be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Krauel to approve Findings and Recommendations; seconded by Casillas. Carried.

SUBORGANIZATIONAL LAYOFFS

4. **Henry C. Coker**, Public Defender, requesting approval for suborganizational layoffs within the Office of Family Dependency Services in the Department of the Public Defender.

RECOMMENDATION: Approve Request

(This item was trailed to the end of this Agenda)

Prior to addressing this item, there was a request to continue this item:

Florence Cannata, Deputy Public Defender, Level III, in the Dependency Unit approached the podium to request a continuance in this matter. She explained that she was given notice on May 27, 2010, in the p.m., via e-mail, that the County had lost the contract to an outside bid, and that a suborganizational layoff would occur. She requested a continuance in order to retain counsel regarding this layoff.

Dennis Floyd, Sr. Deputy County Counsel, on behalf of DHR and the Public Defender, explained that the Administrative Office of the Courts did not provide notice to the Department until May 21, 2010. Mr. Floyd explained that time was of the essence and vital as the funding for the current attorneys would cease June 30, 2010. He reiterated that the Department has moved expeditiously and it is in the public's best interest to proceed with this matter.

Carlos Arauz, Director of DHR, expressed that losing the dependency contract is a horrible situation and not through any fault of the attorneys. Nonetheless he explained that the County will not be receiving funds or work after June 30th, and therefore requested that the Commission address the suborganizational layoff without delay.

Motion by Krauel to deny request for a continuance; seconded by O'Connor. Carried.

Having denied the continuance of this item, President Krauel, on behalf of the Commission, proceeded:

Henry Coker, Alternative Public Defender, explained that he has spent many hours with management staff deciding how best to handle this situation without impacting the quality of service to the public. It became clear to him that the best

action to take was the suborganizational layoff of the Dependency lawyers.

Florence Cannata, Dependency attorney for the Public Defender, expressed that she has extensive experience in Dependency law as well as Criminal law. She added that many of the Dependency attorneys also have criminal law experience. She requested that an investigator be appointed to determine how many Dependency law attorneys also possess Criminal Law experience and could easily transition. Ms. Cannata stated that layoffs should be done by seniority, and she requested to be transferred into the Criminal division.

Ernando Garcia, on behalf of Graciela Sende Garcia (Public Defender III), read her statements to the Commission into the record. She asked for the Department to honor the law and tradition of seniority layoffs. She requested to be transferred into the Criminal Division and believes seniority layoff would be in the public's best interest.

Mr. Arauz approached the podium to state that the MOA does provide for suborganizational layoffs.

Commissioner Krauel stated that she would support a motion for suborganizational layoff even though she does not understand why this method was selected, nor does she understand why a similar process was used six years prior. She stated she would not substitute her judgment for the management decision of Mr. Coker and therefore supports staff recommendation.

**Motion by Bailey to accept staff recommendation;
seconded by O'Connor. Carried.**

OTHER MATTERS

Seal Performance Appraisal

5. **Bryon Yates**, Park Ranger, Department of Parks and Recreation, requesting the sealing of his performance appraisal covering the period January 23, 2009 through January 22, 2010.

RECOMMENDATION: Deny Request

Mr. Yates requested that his Performance Appraisal be sealed due to the Department's late deliverance of his final Appraisal. Mr. Yates stated that he was informed via e-mail that his Appraisal was complete and that he acknowledged the e-mail, only, and did not give his consent for a late delivery. (Mr. Yates was away from the Department during delivery of the e-mail)

**Motion by Bailey to accept staff recommendation;
seconded by O'Connor. Carried.**

6. **Carrie Harris**, former Departmental Human Resources Officer, County Library, requesting the sealing of her performance appraisal covering the period March 3, 2009 through March 2, 2010.

RECOMMENDATION: Hold in abeyance pending outcome of internal appeal process

Ms. Harris requested the sealing of her Performance Appraisal due to alleged violation(s) of the timeline in which her appraisal was issued. The Performance Appraisal in question is in the internal appeal process. Linda Holt, HR Director for the Community Services Group, stated that the Department wishes to hold this issue in abeyance pending the outcome of the internal process.

**Motion by Bailey to accept staff recommendation;
seconded by O'Connor. Carried.**

Prior to Public Input, President Krauel introduced and welcomed Mr. Joe Cordero as the newly appointed Director of the Office of Internal Affairs.

7. Public Input. **None.**

ADJOURNED: 3:50 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: JULY 7, 2010

ASSISTANCE FOR THE DISABLED:

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